

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

IN RE:

Fredrick Allen Scollay
Carolyn Ruth Fischer
aka Carolyn Scollay

Debtors

Case No.: 19-04229
Chapter: 13
Hearing Date: 3/27/2020

Judge A. Benjamin Goldgar

NOTICE OF MOTION

TO: Glenn B Stearns, Chapter 13 Trustee, 801 Warrenville Road Suite 650, Lisle, IL 60532 by electronic notice through ECF
Fredrick Allen Scollay, Carolyn Ruth Fischer, Debtors, 22925 W Lakeview Ave, Antioch, IL 60002
Marc A Affolter, Attorney for Debtors, 55 E. Monroe St. Suite #3400, Chicago, IL 60603 by electronic notice through ECF

PLEASE TAKE NOTICE that on 3/27/2020, at 9:30AM, or as soon thereafter as counsel may be heard, I shall appear before the Honorable Judge A. Benjamin Goldgar, Bankruptcy Judge, in the courtroom usually occupied by him/her at the Park City Branch Court, Courtroom B, 301 Greenleaf Avenue, Park City, Illinois 60085-5725 or before any other Bankruptcy Judge who may be sitting in his/her place and stead, and shall then and there present this Motion of the undersigned, a copy of which is attached hereto and herewith served upon you, and shall pray for the entry of an Order in compliance therewith, at which time you may appear if you so desire.

PROOF OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached Motion upon the parties listed above, as to the Trustee and Debtor's attorney via electronic notice on March 10, 2020 and as to the debtor by causing same to be mailed in a properly addressed envelope, postage prepaid, from 7140 Monroe Street, Willowbrook, IL 60527 before the hour of 5:00 PM on March 10, 2020.

/s/ Joel P. Fonferko
Attorney for Movant

Berton J. Maley ARDC#6209399
Rachael A. Stokas ARDC#6276349
Peter C. Bastianen ARDC#6244346
Joel P. Fonferko ARDC#6276490
Brenda Ann Likavec ARDC#6330036
Karl V. Meyer ARDC#6220397
Grant W. Simmons ARDC#6330446
Codilis & Associates, P.C.
15W030 North Frontage Road, Suite 100
Burr Ridge, IL 60527
(630) 794-5300
14-19-01819

NOTE: This law firm is a debt collector.

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that I have served a copy of this Notice along with the attached Motion upon the parties listed below, as to the Trustee and Debtor's attorney via electronic notice on March 10, 2020 and as to the debtor and co-debtor by causing same to be mailed in a properly addressed envelope, postage prepaid, from 7140 Monroe Street, Willowbrook, IL 60527 before the hour of 5:00 PM on March 10, 2020.

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/s/ Joel P. Fonferko
Attorney for Movant

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**MOTION FOR RELIEF FROM THE AUTOMATIC STAY OR IN THE ALTERNATIVE
TO DISMISS THE CASE FOR FAILURE TO MAKE PLAN PAYMENTS**

NOW COMES Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-R6, (hereinafter "Movant"), by and through its attorneys, Codilis & Associates, P.C., and moves this Honorable Court pursuant to 11 U.S.C. §362(d) for an Order granting Movant relief from the automatic stay or alternatively, for entry of an order dismissing the case pursuant to 11 U.S.C. §1307, and in support thereof states as follows:

1. This Court has jurisdiction pursuant to 28 U.S.C. §1334 and Internal Operating Procedure 15(a) of the United States District Court for the Northern District of Illinois, Eastern Division;
2. The Debtors are indebted to Movant for which the Movant claims a valid security interest in the property commonly known as 22925 W Lakeview Ave # A, Antioch, IL 60002;
3. Enforcement of this security interest has been stayed automatically by operation of 11 U.S.C. §362 of the Bankruptcy Code upon Debtors filing of this petition on 2/18/19;
4. The Chapter 13 plan herein provides for the cure of the default of said mortgage and maintenance of current payments during the pendency of the proceeding;
5. Pursuant to the plan, Debtors are to disburse the current monthly mortgage payments directly to Movant beginning with the first payment due after the filing of the Chapter 13 Bankruptcy (subject to periodic adjustment due to change in escrow);

6. Movant is entitled to relief from the automatic stay under 11 U.S.C. Section 362(d) for the following reasons:

- a) As of 01/27/2020, the Debtors are past due for the 09/01/2019 payment, and all amounts coming due since that date. Any payments received after this date may not be reflected in this default;
- b) As of 01/27/2020, the total post-petition default through and including 01/01/2020, is \$5,783.78, which includes a suspense credit of \$95.95. Any payments received after this date may not be reflected in this default. This amount includes post-petition attorney fees in the amount of \$400.00 (\$250.00 for POC Pay History Preparation; \$150.00 for Post-Petition Fee Notice);
- c) On 02/01/2020, the default will increase, and will continue to increase as additional amounts become due;

7. Said failure to make post-petition mortgage payments is sufficient grounds for relief from the automatic stay for cause pursuant to 11 U.S.C. Section 362(d)(1);

8. That sufficient grounds exist to dismiss this proceeding under 11 U.S.C. §1307 as:

- a) Debtor's failure to timely pay post-petition mortgage payments as required under the plan and 11 U.S.C. §1322(b)(2) and (b)(5) constitutes an unreasonable delay that is prejudicial to moving creditor and the case should be dismissed under §1307(c)(1);
- b) Debtor's failure to timely pay post-petition mortgage payments as required under the plan and 11 U.S.C. §1322(b)(2) and (b)(5) constitutes "cause" and the case should be dismissed under the general provisions of 11 U.S.C. §1307;

- c) The default in post-petition mortgage payments constitutes a material default under paragraph C of the Chapter 13 plan and case should be dismissed under §1307(c)(6);

9. This Court has authority to order that Rule 4001(a)(3) is not applicable to the order entered in granting this motion, and Movant requests this Court so order;

10. Movant has incurred attorney fees and/or costs in connection with this bankruptcy proceeding:

\$1,050.00 for Preparation of Notice and Motion for Relief from the Automatic Stay, and prosecution of same
\$181.00 for Court filing fee

11. PHH Mortgage Corporation services the underlying mortgage loan and note for the property referenced in this Motion for Relief for Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-R6 (the noteholder) and is entitled to proceed accordingly. Should the Automatic Stay be lifted and/or set aside by Order of this Court or if this case is dismissed or if the debtor obtains a discharge and a foreclosure action is commenced or recommenced, said foreclosure action will be conducted in the name of Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-R6 (the noteholder). Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-R6 (the noteholder) has the right to foreclose because: Noteholder is the original mortgagee or beneficiary or assignee of the security instrument for the referenced loan. Noteholder directly or through an agent has possession of the promissory note and the promissory note is either made payable to Noteholder or has been duly endorsed.

WHEREFORE, Deutsche Bank National Trust Company, as Trustee for Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-R6 prays this Court enter an Order pursuant to 11 U.S.C. Section 362(d) modifying the automatic stay as to Movant, or alternatively, for entry of an order dismissing the case pursuant to 11 U.S.C. §1307, allowing the fees and costs described herein to be added to the indebtedness pursuant to the terms of the note and mortgage, and for such other and further relief as this Court may deem just and proper.

Dated this March 10, 2020.

Respectfully Submitted,

Codilis & Associates, P.C.

By: /s/ Joel P. Fonferko

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